

## § 1700.9

## 32 CFR Ch. XVII (7–1–11 Edition)

unless documents are withheld in accordance with § 1700.7(c);

(2) When the withholding is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order;

(3) When the denial is based on 5 U.S.C. 552(b)(3), the statute relied upon; and

(4) Notice to the requester of the right to judicial review.

### § 1700.9 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to ODNI and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(1) For documents to be released, ODNI will provide paper copies or documents on electronic media, if requested and available;

(2) For documents not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be made to ensure requesters can see the placement and general length of redactions with the applicable exemption or exemptions clearly with respect to each redaction.

### § 1700.10 Procedures for business information.

(a) *In general.* Business information obtained by ODNI from a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information pro-

vided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm; and

(3) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), State governments, and foreign governments.

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to Exemption 4 of the FOIA. Such designations shall expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request—*

(1) *Notice to submitters.* ODNI shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) ODNI staff believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last 10 years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* Communication to a submitter of commercial information shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven days of the notice described in

paragraph (c)(1), all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Affirm that the information has not been disclosed to the public;

(B) Explain why the information is a trade secret or confidential commercial information;

(C) Explain in detail how disclosure of the information will result in substantial competitive harm;

(D) Affirm that the submitter will provide ODNI and the Department of Justice with such litigation support as requested; and

(E) Be certified by an officer authorized to legally bind the submitter.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) ODNI shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Director, IMO, decides to disclose a document over the objection of a submitter, ODNI shall provide the submitter a written notice that shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date that is seven days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the ODNI shall also notify the requester and, if the ODNI notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates legal action seeking to compel disclosure of information asserted to be within the scope of this section, ODNI shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by ODNI and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section

shall not apply if ODNI determines that:

(i) The information should not be disclosed, pursuant to Exemption 4 and/or any other exemption of the FOIA;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the ODNI will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

#### **§ 1700.11 Procedures for information concerning other persons.**

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the FOIA if the proposed release would constitute a clearly unwarranted invasion of personal privacy, or, if the information was compiled for law enforcement purposes, it could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. 552 (b)(6) and (b)(7)(C). For purposes of this section, the following definitions apply:

(1) Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter that might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to Exemptions 6 and 7(C) of the FOIA, ODNI will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.